
In the Matter of: :
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: :
Carl L. Williams, : HUDBCA No. 04-A-CH-AWG11
: Claim No. 780447634
Petitioner :
:

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U.S. Department of Housing and
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DECISION AND ORDER

Petitioner requested a hearing concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development ("HUD"). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), authorizes Federal agencies to utilize administrative wage garnishment for the collection of debts owed to the United States Government.

The administrative judges of this Board have been designated to determine whether the Secretary may collect the alleged debt by administrative wage garnishment if contested by a debtor. 24 C.F.R. § 17.170(b). This hearing was conducted in accordance with the procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.170. The Secretary has the initial burden of proof to show the existence and amount of the debt. 31 C.F.R. § 285.11 (f)(8)(i). Petitioner thereafter must present by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, Petitioner may present evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship to the Petitioner, or that collection of the debt may not be pursued due to operation of law, 31 C.F.R. § 285.11 (f)(8)(ii). Pursuant to 31 C.F.R. § 285.11 (f)(10)(i), issuance of a wage withholding order was stayed by this Board until the issuance of this written decision.

SUMMARY OF FACTS AND DISCUSSION

On August 29, 1990, Petitioner executed and delivered to Statewide Mortgage an installment note in the amount of \$10,500.00 for a property improvement loan that was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 U.S.C. §1703. (Secretary's Statement, hereinafter "Secy. Stat.," Exh. A). Thereafter, Petitioner failed to make payments as agreed to in the Note. Consequently, American Savings Mortgage Corporation assigned the note to the United States of America in accordance with 24 C.F.R. Sec. 201.54 (2003). Petitioner is currently in default on the note and the Secretary is the holder of the note on behalf of the United States of America. (Secy. Stat., unmarked exh.). Petitioner is indebted to the Secretary in the following amounts: \$5,549.98 as the unpaid principal through March 31, 2004; \$0.00 as the unpaid interest on the principal balance at 2% through March 31, 2004; and interest on said principal balance from March 31, 2004 at 2% annum until paid. (Supplemental Declaration of Brian Dillon, hereinafter "Dillon Decl.>"). The Secretary seeks to recover this outstanding obligation by means of an administrative wage garnishment order in the amount of \$100.53 biweekly. (Supp. to Secy. Statement, Supp. Decl. of Brian Dillon, at 6).

Petitioner does not dispute the amount of the debt and the terms of the proposed repayment schedule. Petitioner states that an administrative wage garnishment in the amount requested by the Secretary will cause Petitioner financial hardship. Petitioner may present evidence that the terms of the repayment schedule would cause a financial hardship to the Petitioner. 31 C.F.R. § 285.11(f)(8)(ii). As evidence of this financial hardship, Petitioner submitted a Consumer Debtor Financial Statement. (Administrative Wage Garnishment Hearing Resolution, unmarked exh.). Petitioner's Consumer Debtor Financial Statement shows that his monthly expenses are greater than his monthly wages. Specifically Petitioner states that his monthly expenses include: rent for \$610.00; \$300.00 in car payments; \$125.00 in gasoline/auto repairs; \$175.00 in electricity; \$200.00 for food; \$68.00 for cable/satellite television; \$100.00 in clothing; \$47.00 for car insurance; \$70.00 for phone; and \$62.00 for life insurance. Id.

Although Petitioner has listed his monthly expenses, he did not submit the requisite documentary evidence to the Board to substantiate his claim that an administrative wage garnishment would cause financial hardship despite being specifically ordered to do so by this Board on March 4, 2004 (Notice of Docketing, Order, and Stay of Referral) and again by Order dated May 4, 2004. Consequently, this Board is unable to determine whether the administrative wage

garnishment sought by the Secretary would constitute a financial hardship pursuant to 31 U.S.C. § 285.11(f)(8)(ii) because Petitioner has failed to submit to this Board relevant documentary evidence regarding his current financial condition. In the absence of such evidence, the Board finds that the wage garnishment in the amount sought by the Secretary is justified.

ORDER

Upon due consideration of the argument, allegations, and documentary evidence set forth in the record of this proceeding, I find that the debt which is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary.

The Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment is vacated. It is hereby ORDERED that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in the biweekly amount of \$100.53.

David T. Anderson
Administrative Judge

July 20, 2004